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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re J.C., a Person Coming Under the
Juvenile Court Law.

SAN DIEGO COUNTY HEALTH AND
HUMAN SERVICES AGENCY,

Plaintiff and Respondent,

v.

C.C. et al.,

Defendants and Appellants.

D073984

(Super. Ct. No. SJ13391)

APPEALS from an order of the Superior Court of San Diego County, Kimberlee

A. Lagotta, Judge. Affirmed.

William Hook, under appointment by the Court of Appeal, for Defendant and
Appellant C.C.

Lauren K. Johnson, under appointment by the Court of Appeal, for Defendant and
Appellant J.C.

Thomas E. Montgomery, County Counsel, John E. Philips, Chief Deputy County Counsel, and Jesica N. Fellman, Deputy County Counsel, for Plaintiff and Respondent.

Amy Zimmer Tobin, under appointment by the Court of Appeal, for Minor.

J.C. (Father) and C.C. (Mother) appeal an order denying in part Father's petition for disclosure of their daughter's (J.C.)¹ juvenile case file pursuant to Welfare and Institutions Code section 827.² Father seeks his daughter's mental health records for use in a separate criminal case pending against Father, arising from the incident that brought daughter into protective custody. Father contends the juvenile court erred by: (1) denying his request for J.C.'s military mental health records without conducting an in camera review to determine whether it was necessary or appropriate to release those records to him; and (2) refusing to conduct an in camera review of J.C.'s military mental health records based on its conclusion that the records were protected by the psychotherapist-patient privilege. Mother joins in Father's arguments. Because the military mental health records at issue are not part of the juvenile court file within the meaning of section 827, we conclude the juvenile court properly denied Father's petition for disclosure, and we affirm the order.

¹ Because the names of Father and his daughter have the same initials, we will refer to them as "Father" and "J.C.," respectively, to avoid any confusion.

² All statutory references are to the Welfare and Institutions Code unless otherwise specified.

FACTUAL AND PROCEDURAL BACKGROUND³

In June 2017, the San Diego County Health and Human Services Agency (Agency) filed a section 300, subdivision (a), petition alleging J.C. had suffered, or there was a substantial risk that she would suffer, serious physical harm nonaccidentally inflicted by Father. In particular, the petition alleged that in May 2017 Father had subjected J.C. to physical abuse by slapping her in the face, causing her nose to bleed, directing her to sit on the floor with her arms and legs extended, and hitting and kicking her if she dropped that pose, resulting in bruises to her arm. In August, a misdemeanor complaint was filed in criminal court charging Father with two counts of cruelty to a child by inflicting injury (Pen. Code, § 273a, subd. (b)) and two counts of battery (Pen. Code, § 242).

At a special hearing in September, Mother requested that the juvenile court sign a subpoena duces tecum ordering the military to release J.C.'s marriage and family therapy records. The court denied her request.

At the contested jurisdiction and disposition hearing, the juvenile court made a true finding on the petition, removed J.C. from Father's custody, and placed her in Mother's care. J.C. was to remain in her current detention pending transition to Mother's home within 48 hours. Shortly thereafter, J.C. was hospitalized due to suicidal ideation. At a special hearing, the court ordered that J.C.'s transition to Mother's home occur within

³ For a more detailed factual background, refer to our prior nonpublished opinion in the related case of *In re J.C.* (Aug. 22, 2018, D073496) [nonpub. opn.].

three months. After J.C.'s release from the hospital, she lived in the home of nonrelative extended family members.

In April 2018, Father filed a section 827 petition requesting disclosure of J.C.'s juvenile case file. Specifically, his petition sought "[t]he entire record, past and in the future, of dependency proceedings, including trial transcripts; all social worker reports, addendum reports." Father stated he needed those records because "[J.C.] was untruthful and there was a specific finding by the Court, trier of fact, that [J.C.] was 'not credible,' [J.C.'s] testimony was impeached and the truth or lack thereof of specific items in her testimony will be necessary and material to the defense of the criminal case." Agency objected to the petition, arguing it was overbroad, and requested that the court conduct an in camera review for relevant information limited to the court's jurisdictional and dispositional findings and orders. J.C.'s counsel similarly objected to the petition as overbroad, asserted all applicable privileges, and requested that the court conduct an in camera review for relevant information limited to the court's jurisdictional and dispositional findings and orders and of any privileged information before release.

At the hearing on Father's section 827 petition, the court granted the petition in part, finding his need for discovery of certain records outweighed the public policy considerations favoring confidentiality of juvenile case files. The juvenile court explained that it would review in camera all documents comprising the juvenile case file in its possession, and requested that trial transcripts not in its possession be submitted for the court's review:

"When the court reviews the 827 petition filed by Father on April 2nd, 2018, the records requested are the entire record, past and in the future, of dependency proceedings, including trial transcripts, social worker reports, and addendum reports.

"What I will say at this point is I'm not inclined to grant the 827 for all future records. But I will include all records received up to today's date in my in camera review.

"When I – what the court has the opportunity to review is the entire record, specifically all of the social worker reports and minute orders that are in [the] file.

"What the court does not have is trial transcripts So that's something that will need to be ordered separately by the parties."

The juvenile court later confirmed, "I am prepared to review in camera all of the documents that are in the court file, that includes social worker reports. It includes the petition, everything forward. It includes trial exhibits, the trial exhibit list, and all addendum reports, including the addendum report of today's date. . . . [¶] I'm not going to grant future records because I don't know what that is." The court stated it would release these records, subject to performing an in camera review and issuing a protective order.

Father's counsel sought clarification regarding whether J.C.'s military mental health records would be released and asked the court to overrule J.C.'s privilege objection, arguing that Father needed that information to receive a fair trial as a criminal

defendant.⁴ The court stated that J.C. had waived her psychotherapist-patient privilege as to *certain* psychological evaluations and reports created during the instant dependency proceedings and therefore those documents would be released, subject to the court's in camera review. However, regarding J.C.'s military mental health records at issue in this appeal, Agency, her counsel, and the court confirmed that those records were not in their possession.⁵

The court denied Father's request for release of documents that were not in its possession and were not part of the contested jurisdictional and dispositional trial, stating:

"[G]iven the assertion of the privilege to documents that pre-date jurisdiction and to documents that are not in the court's possession and were not part of the trial, I will deny the request to have those documents produced.

"But those documents that we have just referenced that are in the court file and to which [J.C.] has waived the privilege, the court will review in camera and release those that are relevant to the inquiry."

Father and Mother timely filed notices of appeal challenging the court's order denying Father's request for disclosure of J.C.'s military mental health records that were

⁴ J.C.'s military mental health records at issue in this appeal related to therapy she received prior to the May 2017 incident that resulted in the instant dependency proceedings.

⁵ In particular, Agency's counsel represented at the hearing that "none of us are in possession of" J.C.'s military mental health records.

created prior to the May 2017 incident.⁶ Father's notice of appeal states: "The Court denied disclosure of minor's pre-offense psychotherapist records by the Naval Hospital establishing Depression and Post Traumatic Stress Disorder. Minor's counsel has put at issue minor's mental state by filing 387 and Petition for Writ of Mandate."

DISCUSSION

I

Governing Legal Principles

"It is the express intent of the Legislature 'that juvenile court records, in general, should be confidential.' [Citation.] The strong public policy of confidentiality of juvenile proceedings and records has long been recognized. [Citations.]" (*Keisha T.*, *supra*, 38 Cal.App.4th at p. 231.) "Juvenile case files may only be obtained or inspected in accordance with sections 827, 827.12, and 828. They may not be obtained or inspected by civil or criminal subpoena." (Cal. Rules of Court, rule 5.552(b).)⁷ To help frame the discussion *post*, we discuss the provisions defining a juvenile case file, and the procedures for obtaining confidential records pursuant to section 827 and rule 5.552.

⁶ An order granting or denying a section 827 petition is appealable as a final judgment in a special proceeding. (Code Civ. Proc., § 904.1, subd. (a)(1); *In re Keisha T.* (1995) 38 Cal.App.4th 220, 229 (*Keisha T.*)).

⁷ All references to rules are to the California Rules of Court.

A.

Juvenile Case Files

Section 827, subdivision (e), defines a "juvenile case file" as follows:

"[A] 'juvenile case file' means a petition filed in any juvenile court proceeding, reports of the probation officer, and all other documents filed in that case or made available to the probation officer in making his or her report, or to the judge, referee, or other hearing officer, and thereafter retained by the probation officer, judge, referee, or other hearing officer."

Rule 5.552(a) defines a protected "juvenile case file" to include:

"(1) All documents filed in a juvenile court case;

"(2) Reports to the court by probation officers, social workers of child welfare services programs, and CASA volunteers;

"(3) Documents made available to probation officers, social workers of child welfare services programs, and CASA volunteers in preparation of reports to the court;

"(4) Documents relating to a child concerning whom a petition has been filed in juvenile court that are maintained in the office files of probation officers, social workers of child welfare services programs, and CASA volunteers;

"(5) Transcripts, records, or reports relating to matters prepared or released by the court, probation department, or child welfare services program; and

"(6) Documents, video or audio tapes, photographs, and exhibits admitted into evidence at juvenile court hearings."

Confidentiality attaches to documents comprising the "juvenile case file" no matter who has physical custody of the documents (*Wescott v. County of Yuba* (1980))

104 Cal.App.3d 103, 106-109), and regardless of whether juvenile proceedings were ever instituted. (*In re Elijah S.* (2005) 125 Cal.App.4th 1532, 1552 (*Elijah S.*).

B.

Section 827 Petitions

Section 827 lists classes of persons who have a right to inspect a juvenile case file without a court order, including a minor's parent. (§ 827, subd. (a)(1); *In re B.F.* (2010) 190 Cal.App.4th 811, 818 (*B.F.*).)⁸ Even when a parent is entitled to inspect a juvenile case file, if that individual seeks privileged or confidential records to which he or she is not otherwise entitled under state or federal law, that parent must file a section 827 petition. (§ 827, subd. (a)(3)(A).)⁹ The juvenile court may also impose restrictions on a parent's ability to disseminate juvenile court records to which the parent has access. (See *In re Tiffany G.* (1994) 29 Cal.App.4th 443, 449-451 [court acted within its discretion in prohibiting dissemination of juvenile court records, including psychological evaluations].)

⁸ Persons not listed in section 827, subparagraphs (a)(1)(A) to (P) and (a)(1)(R), may inspect a juvenile case file when authorized to do so "by court order of the judge of the juvenile court upon filing a petition." (§ 827, subd. (a)(1)(Q).)

⁹ Section 827, subdivision (a)(3)(A), provides in relevant part: "If a juvenile case file, or any portion thereof, is privileged or confidential pursuant to any other state law or federal law or regulation, the requirements of that state law or federal law or regulation prohibiting or limiting release of the juvenile case file or any portions thereof shall prevail. Unless a person is listed in subparagraphs (A) to (P), inclusive, of paragraph (1) and is entitled to access under the other state law or federal law or regulation without a court order, all those seeking access, pursuant to other authorization, to portions of, or information relating to the contents of, juvenile case files protected under another state law or federal law or regulation, shall petition the juvenile court."

A petitioner seeking a juvenile case file pursuant to section 827 must (1) identify "[t]he specific files sought"; (2) assert that "such files exist"; and (3) "describe in detail the reasons the files are being sought and their relevancy to the proceeding or purpose for which petitioner wishes to inspect or obtain the files." (Rule 5.552(b)(1), (2).) "The court must review the petition and, if petitioner does not show good cause, deny it summarily." (Rule 5.552(d)(1); *B.F.*, *supra*, 190 Cal.App.4th at p. 818.) "[I]f the court determines that there may be information or documents in the records sought to which the petitioner may be entitled, the juvenile court judicial officer must conduct an in camera review of the juvenile case file and any objections and assume that all legal claims of privilege are asserted." (Rule 5.552(d)(3).)

"In determining whether to authorize inspection or release of juvenile case files, in whole or in part, the court must balance the interests of the child and other parties to the juvenile court proceedings, the interests of the petitioner, and the interests of the public." (Rule 5.552(d)(4).) Because the policy of confidentiality of juvenile court records is not absolute (*Keisha T.*, *supra*, 38 Cal.App.4th at p. 231), juvenile courts may authorize disclosure of juvenile case files for use in both civil and criminal cases. (See, e.g., *In re Anthony H.* (2005) 129 Cal.App.4th 495, 498 [directing juvenile court to consider grandmother's section 827 petition seeking disclosure of her grandson's juvenile court file for her federal civil action against county social service department for mishandling case]; *Foster v. Superior Court* (1980) 107 Cal.App.3d 218, 227-230 [remanding section 827 petition to provide criminal defendant charged with indecent exposure to

wards in county juvenile hall the opportunity to make "a more specific showing" of need].) Even in criminal cases, however, a defendant is not entitled to inspect material as a matter of right without regard to other legitimate interests. (*Foster, supra*, at pp. 229-230; see *People v. Hammon* (1997) 15 Cal.4th 1117, 1128 [defendant's Sixth Amendment rights of confrontation and cross-examination did not authorize pretrial disclosure of information protected by the psychotherapist-patient privilege].)

"The court may permit disclosure of juvenile case files only insofar as is necessary, and only if petitioner shows by a preponderance of the evidence that the records requested are necessary and have substantial relevance to the legitimate need of the petitioner." (Rule 5.552(d)(6).) "If, after in-camera review and review of any objections, the court determines that all or a portion of the juvenile case file may be disclosed, the court must make appropriate orders, specifying the information to be disclosed and the procedure for providing access to it." (Rule 5.552(d)(7).)

It is well recognized that the juvenile court is in the best position to balance the competing interests that arise when confidential juvenile court records are requested. (*Keisha T., supra*, 38 Cal.App.4th at p. 231.) The juvenile court "has broad and exclusive authority to determine whether and to what extent to grant access to confidential juvenile records pursuant to section 827. [Citations.] Review of a juvenile court's decision to release juvenile records under section 827 is for abuse of discretion." (*Elijah S., supra*, 125 Cal.App.4th at p. 1541.)

II

Request for Disclosure of J.C.'s Military Mental Health Records

Father contends the juvenile court erred by denying his section 827 petition to the extent he requested disclosure of J.C.'s military mental health records. He argues the court should have first conducted an in camera review of those records to determine whether it was necessary or appropriate to release those records to him. Mother joins in Father's arguments on appeal. In response, Agency contends that because J.C.'s mental health records were not part of her juvenile case file, the court correctly denied Father's request for disclosure of those records pursuant to his section 827 petition.¹⁰ J.C.'s counsel joins in Agency's arguments. We conclude the juvenile court did not abuse its discretion in denying Father's section 827 petition.

Father had the burden of establishing good cause for disclosure of the requested military mental health records. (Rule 5.552(d)(1); *B.F.*, *supra*, 190 Cal.App.4th at p. 818.) He failed to meet that burden. Father's section 827 petition was deficient. Contrary to rule 5.552(b)(1)'s requirement, Father's petition did not specifically identify J.C.'s military mental health records as part of the juvenile case files being sought, nor

¹⁰ Agency also asserts that because J.C.'s military mental health records are not part of her juvenile case file under section 827 and therefore we cannot provide meaningful relief, we should dismiss Father's and Mother's appeals. The two cases cited by Agency, *In re Sade C.* (1996) 13 Cal.4th 952, 994 [upholding dismissal of appeals for abandonment], and *In re M.M.* (2007) 154 Cal.App.4th 897, 901, 917 [dismissing appeal for lack of jurisdiction], are factually and procedurally inapposite to this case and do not persuade us the instant appeals must be dismissed. We therefore deny Agency's motion to dismiss.

did it state, based on his knowledge, information, and belief, that such juvenile case files exist.¹¹ To the contrary, Father has never claimed that the records exist *as part of the juvenile court file*. Father's petition was also defective because it failed to adequately explain, with the required level of detail, the reasons the files were being sought and their alleged relevance to Father's criminal case. (Rule 5.552(b)(2) [petitioner must explain why documents are sought, and their relevance, "in detail"].) The trial court was not required to accept generalized assertions regarding Father's need to undermine his daughter's credibility in his criminal case.¹²

Father's petition suffers from an additional defect beyond his failure to establish good cause for disclosure. He has failed to establish that the military mental health records are part of the juvenile court file within the meaning of section 827. Section 827, subdivision (e), defines protected documents as "a petition filed in any juvenile court proceeding, reports of the probation officer, and all other documents filed in that case or

¹¹ As discussed *ante*, rule 5.552(b) sets forth requirements for a section 827 petition for disclosure of juvenile case files and states that "[t]he specific files sought must be identified based on knowledge, information, and belief that such files exist and are relevant to the purpose for which they are being sought."

¹² Father's petition merely asserted "the truth or lack thereof of specific items in [J.C.'s] testimony will be necessary and material to the defense of the criminal case." At the hearing, Father's counsel argued, "The medical and psychological reports, or anything flowing from it, is directly relevant and discoverable. If we deprive the criminal defendant of that information, he would never get a fair trial. That's the heart of the case, the issue at hand. . . . [¶] I know the privilege is there to protect people holding the privilege, but at some point that privilege has to give way to due process and just procedural due process and just basically having a fair trial, either in this forum or in the criminal forum."

made available to the [judge and other specified individuals] . . . and thereafter retained" by those specified individuals. (§ 827, subd. (e).) Rule 5.552 defines protected "juvenile court records" to include (1) all documents filed in a juvenile court case; (2) reports to the court by probation officers, social workers, and special advocates; (3) documents made available to probation officers, social workers, and special advocates in preparation of such reports; (4) documents relating to a child concerning whom a petition has been filed, that are maintained in the office files of probation officers, social workers, and special advocates; (5) transcripts, records, or reports relating to matters prepared or released by the court, probation department, or child welfare services program; and (6) documents and exhibits admitted into evidence at juvenile court hearings. (Rule 5.552(a).) J.C.'s military mental records do not fall within *any* of these categories. The record on appeal does not include copies of J.C.'s military mental health records. (§ 827, subd. (e); rule 5.552(a)(1), (6).) It is undisputed that the requested records pre-date the dependency action. Nothing in the record establishes J.C.'s military mental health records were "made available to," or "maintained in the office files of," Agency or any of its social workers. (§ 827, subd. (e); rule 5.552(a)(3), (4).) Notably, at the section 827 hearing, Agency, J.C.'s counsel, and the juvenile court confirmed that they do not have copies of J.C.'s military mental health records.¹³ Because the requested records are not part of

¹³ For example, during the hearing on Father's section 827 petition, the following exchange occurred: "[Agency counsel]: There also is a psychological evaluation that was attached to a previous addendum report. [¶] I think the discussion right now is the –

J.C.'s "juvenile case file," as that term is defined in section 827, subdivision (e), and rule 5.552(a), the juvenile court correctly denied Father's section 827 petition.

Father cannot demonstrate an abuse of discretion by contending the juvenile court failed to perform an in camera review prior to denying his section 827 petition. As noted, Father has failed to establish that the requested documents are part of the juvenile case file. Because the documents are not part of the juvenile court file in the first instance, the juvenile court's obligation to conduct an in camera review was never triggered. (See rule 5.552(d)(3) [*"if the court determines that there may be information or documents in the records sought to which the petitioner may be entitled, the juvenile court judicial officer must conduct an in camera review"*], italics added; cf. *J.E. v. Superior Court* (2014) 223 Cal.App.4th 1329, 1339 ["upon a showing there is a reasonable basis to believe exculpatory or impeachment evidence exists in [minor's] juvenile records, petitioner is entitled to have the juvenile court conduct an in camera review of the records"].) The juvenile court was well aware of its obligation to conduct an in camera review when required, as it did with respect to documents that were part of the file and fell within the scope of section 827, subdivision (e), and rule 5.552(a). For example, the juvenile court reviewed in camera psychological reports that were part of the court file, and also requested that the parties submit other documents constituting the "juvenile case file" that were not in its possession (i.e., transcripts) for the court to review.

are the records from the Navy that none of us are in possession of, and that was pre-judisdictional. [The court]: Right."

To the extent Father contends his section 827 petition was an appropriate means to obtain military mental health records that are *not* part of a juvenile case file, we reject his claim. Section 827 and rule 5.552 provide a clear framework for the release of documents comprising the "juvenile case file." When presented with a section 827 petition for disclosure of juvenile records, "the juvenile court is in the best position to weigh competing concerns with respect to disclosure." (*Elijah S.*, *supra*, 125 Cal.App.4th at p. 1550.) The juvenile court has no occasion to perform this balancing process unless it is examining juvenile court records within its vested authority. Father fails to cite any authority to support the claim that the juvenile court, pursuant to section 827, was required to order the military, as custodian of J.C.'s military mental health records, to produce or disclose those records pursuant to a subpoena duces tecum. We therefore deem Father's contention waived. (*In re Marriage of Falcone & Fyke* (2008) 164 Cal.App.4th 814, 830 ["The absence of cogent legal argument or citation to authority allows this court to treat the contentions as waived."]; *People v. Stanley* (1995) 10 Cal.4th 764, 793 [" '[E]very brief should contain a legal argument with citation of authorities on the points made. If none is furnished on a particular point, the court may treat it as waived, and pass it without consideration.' "].)

In sum, because Father did not show that J.C.'s military mental health records are part of the juvenile case file within the meaning of section 827, subdivision (e), and rule 5.552(a), he did not meet his burden to show good cause for disclosure of those

records or otherwise show the juvenile court abused its discretion by denying his section 827 petition. (*Elijah S.*, *supra*, 125 Cal.App.4th at p. 1541.)

III

Psychotherapist-Patient Privilege

Father and Mother contend the juvenile court erred by refusing to conduct an in camera review based on its conclusion the psychotherapist-patient privilege precluded release of J.C.'s military mental health records. (See Evid. Code, § 1014.)

A "patient, whether or not a party, has a privilege to refuse to disclose, and to prevent another from disclosing, a confidential communication between patient and psychotherapist." (Evid. Code, § 1014.) This privilege rests on the premise " 'that an environment of confidentiality of treatment is vitally important to the successful operation of psychotherapy.' " (*Story v. Superior Court* (2003) 109 Cal.App.4th 1007, 1014, quoting *In re Lifschutz* (1970) 2 Cal.3d 415, 422.) Courts will "broadly construe[]" this privilege "in favor of the patient," and "narrowly construe[]" exceptions to the privilege. (*Story*, *supra*, at p. 1014.) "It is established that the psychotherapist-patient privilege applies to the relationship between a dependent child and his or her therapist." (*In re Mark L.* (2001) 94 Cal.App.4th 573, 581.)¹⁴

We reject Father's claim that the juvenile court failed to comply with any obligation to perform an in camera review. There was no dispute here regarding: (1) the

¹⁴ J.C.'s counsel invoked the psychotherapist-patient privilege on behalf of the minor. (See § 317, subd. (f).)

types of records at issue (i.e., records relating to J.C.'s mental health treatment); or (2) the fact that these records were not in the possession of Agency or the juvenile court.

If J.C.'s military mental health records *were* actually part of the juvenile case file—if they had been filed with the court or made available to the social worker and retained in Agency's files—the juvenile court would have to balance the competing interests of all parties, including minor's interest under Evidence Code section 1014. (See § 827, subd. (a)(3)(A) [state and federal privileges prevail in evaluating section 827 petitions].) We need not address how those interests should be weighed given our conclusions *ante* that the juvenile court properly denied Father's petition based on the record here.

DISPOSITION

The order is affirmed.

GUERRERO, J.

WE CONCUR:

NARES, Acting P. J.

O'ROURKE, J.